

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JEROME KEITH MARTIN,

Plaintiff,

Case No. 2:06-cv-119

v.

Honorable Gordon J. Quist

(UNKNOWN) BERGH et al.,

Defendants.

/

**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND DENYING EXTENSION OF TIME**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on August 28, 2008. The Report and Recommendation was duly served on the parties and recommended that the Court grant Defendants' motion for summary judgment (docket #39). Plaintiff has failed to file objections, but has instead filed a motion for extension of time to file such objections (docket #73). In his brief in support of the motion, Plaintiff claims that his "legal agreement partner" has been transferred to another prison and seeks 90 days in which to file objections. After reviewing the record, the court concludes that Plaintiff's motion for extension of time is properly denied.

In the report and recommendation, the Magistrate Judge concluded that Plaintiff had failed to exhaust his administrative remedies. The Magistrate Judge noted that Plaintiff had become aware of the situation raised in his complaint shortly after June 24, 2005, when he was placed on "No Out of Cell Movement" status. Plaintiff filed a grievance regarding the issue on November 28, 2005, which is more than seven months after he was released from "No Out of Cell Movement" status on April 5, 2005. Plaintiff's step I grievance was rejected as untimely. Plaintiff appealed this

rejection to step III, to no avail. Because Plaintiff's grievance was rejected as untimely, the grievance was not properly exhausted, and his claim is therefore barred. *Woodford v. Ngo*, 126 S.Ct. 2378, 2386-88 (2006). In Plaintiff's motion to extend the time to file objections, he fails to give any explanation for this delay. Such an action does not require the assistance of a legal writer. Therefore, Plaintiff's motion (docket #73) is denied. Moreover, for the reasons set forth in the report and recommendation, Defendants' motion for summary judgment (docket #39) is granted. Accordingly,

IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court and Defendants' motion for summary judgment (docket #39) will be granted.

IT IS FURTHER ORDERED that an appeal of this action would not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should plaintiff appeal this decision, the Court will assess the \$255 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the \$455 appellate filing fee in one lump sum. Accordingly, should plaintiff seek to appeal this matter to the Sixth Circuit, the appeal would be frivolous and not taken in good faith.

Dated: September 12, 2008

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE